IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1071 of 1998

with

CRIMINAL APPEAL No 75 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JESINGBHAI MOHANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1071 of 1998
   MR G RAMAKRISHNAN for Appellant No.
   THROUGH JAIL for Appellant No.
   Mr.I.M.Pandya, learned A.P.P. for Respondent No. 1
2. Criminal Appeal No. 75 of 1999
   Mr.I.M.Pandya, learned A.P.P. for Appellant No.
   NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 01/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE SHARAD D.DAVE)

#. The State has filed the criminal appeal no.75 of 1999 under Section 377 of the Criminal Procedure Code for enhancement of sentence of rigorous imprisonment for five years and fine of Rs.500/- in default, rigorous imprisonment for six months for the offence punishable under Section 395 of the Indian Penal Code and rigorous imprisonment for five years and fine of Rs.500/- in default, rigorous imprisonment for six months awarded to original accused nos.2 to 4 vide judgment and order of sentence passed by the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No.14 of 1997 on 03.10.1998, whereas the appeal being criminal appeal no.1071 of 1998 is filed by the original accused no. 4 against the judgment and order referred to above wherein he was convicted and sentenced to punishment as referred to above.

#. The brief facts of the present case are as under :

It is alleged by the complainant Sanjivkumar Rajmani Pandey residing at Swami Vivekanand Society, Vejalpur, Taluka Kalol that on 18.04.1996 he was sleeping with his family and at about 1.30 a.m. he heard harsh knocks at his door and after sometime, the latch of the door was opened forcibly by the persons and entered the house of the complainant. It is alleged that on such situation, the complainant ran in fear who was chased by two to three persons-accused and given stone blows. It is alleged that the accused took away the golden ring and chain and they also took away the golden chain and bangles of his wife and also took away some other valuable things from the cupboard. It is alleged that when the neighbours gathered on hearing the shouts of the complainant and his wife, the accused ran away and the complainant filed the complaint to that effect in the Kalol Police Station which came to be registered as C.R.No.I-96/96. It appears that after completion of the investigation, chargesheet came to be filed in the Court of J.M.F.C. Kalol who committed the case to the Court of Sessions, Panchmahals at Godhra.

#. The learned Sessions Judge framed the charge at exh.2

on 25.11.1997 against all accused for the offences punishable under Sections 395 & 397 of the Indian Penal Code. The charge was read over and explained to the accused who pleaded not guilty and claimed to be tried. Therefore, the prosecution examined (1) P.W.No.1 Sanjivkumar Rajmani Pandey Exh.10, (2) P.W.No.2 Bharatkumar Kiritkumar Darji Exh.12, (3) P.W.No.3 Sanjaybhai Rajendrabhai Shah Exh.19, (4) P.W.4 Madhuben Radhapati Sharma Exh.20, (5) P.W.No.5 Yunusbhai Kasambhai Memon Exh.21, (6) P.W.No.6 Narayanbhai Someshwarbhai Trivedi Exh.30, (7) P.W.No.7 Gopalbhai Shivshankar Joshi Exh.33, (8) P.W.No.8 Dolatsinh Bhupatsinh Raulji Exh.37. The prosecution also produced documentary evidence viz. complaint Exh.11, panchanama of scene of offence Exh. 13, Dog Squad panchanama Exh.14, Discovery Panchanama Exh.31 etc. On submission of the closing pursis by the prosecution, the learned Sessions Judge recorded further statement of the accused under Section 313 of the Criminal Procedure Code. Thereafter, after hearing the learned counsel for the respective parties, the learned Sessions Judge convicted the accused and sentenced them as stated above, against which these appeals are preferred.

#. We have heard the learned A.P.P.Ms.Punani for the State and Mr.G.Ramakrishnan learned counsel appearing as amicus curiae for the respondent-accused.

#. From the papers, it appears that in the appeal filed by the State, none of the accused-respondents have appeared either personally or through advocate, but Mr.G.Ramakrishnan, who appeared as amicus curiae for the appellant in the appeal filed by the original accused no.4, also appeared for the original accused nos. 2 to 4 in the appeal filed by the State as amicus curiae, on the direction given by this Court.

#. When the appeal came up for hearing, on verifying the records, it was found that the original accused no.4 who has filed the criminal appeal no. 1071 of 1998, has already undergone the sentence awarded to him by the learned Additional Sessions Judge and is released from jail on the completion of the same. Therefore, as nothing remains to be done in this appeal, this Court decided to hear the State appeal.

#. Ms.Punani learned A.P.P. has taken us through the oral as well as the documentary evidence on record along with the reasoned judgment delivered by the learned Sessions Judge and argued that the act of the respondents-accused is well planned as they gathered in

the jail and planned to commit robbery in the house of Dr.Pandey and therefore, looking to the seriousness of the offence under Sections 395 and 397 of I.P.C., the learned Judge ought to have imposed maximum punishment to the respondents-accused. It is also argued that the learned Judge ought to have seen that day to day cases of theft are increasing and therefore, the learned Judge ought to have seen that the sentence imposed upon the accused is lenient one and reasons given by the learned Judge while imposing lesser sentence are not cogent and convincing and therefore the punishment imposed would not act as deterrent and therefore prayed for enhancing the punishment imposed on the accused by allowing the appeal filed by the State.

#. Learned advocate Mr.Ramakrishnan for the respondents on the other hand submitted that the judgment of the learned Judge is a well reasoned judgment and no interference is required by this Court. He further submitted that the sentence imposed on the accused is already undergone by them and they are out since 2002, therefore, also no enhancement is required after two years of their release. He also submitted that the accused are coming from lower strata of the society and this was their first offence for which they have undergone sufficient punishment and therefore the appeal filed by the State be dismissed.

#. Keeping in view the fact that the original accused-respondents are coming from lower strata and the offence committed by the accused and also the fact that they are already released from jail after undergoing the sentence imposed upon them, we are of the view that sufficient punishment is imposed by the learned Additional Sessions Judge, after assigning reasons for the same. Therefore, we do not feel it proper to interfere with the judgment and order of the learned Additional Sessions Judge, after more than two years of the release of the accused from jail and the same is required to be confirmed.

##. Accordingly, criminal appeal no. 75 of 1999 is dismissed. The judgment and order dated 3.10.1998 delivered by the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No.14 of 1997 is hereby confirmed.

##. The criminal appeal no.1071 of 1998 is hereby disposed of as it has become infructuous.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)

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